

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM MARION COUNTY  
Court of Common Pleas

The Honorable Michael G. Nettles, Circuit Court Judge

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Appellate Case No. 2019-000759  
Civil Action No. 2018-CP-33-00534

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**RECEIVED**

JUL 18 2019

SC Court of Appeals

James Washington, Jr. ....Appellant

vs.

Crystal Denise Dudley .....Respondent

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**APPELLANT’S MEMORANDUM OF LAW  
IN SUPPORT OF IMMEDIATE APPEALABILITY**

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Appellant, James Washington, Jr. (“Appellant”), submits this memorandum in support of the immediate appealability of the Order Setting Aside Default. For the reasons stated below, Appellant submits that the trial court applied the wrong standard in its Order Setting Aside Default, which affects the merits of the case and the substantial rights of Appellant. There is no evidentiary support for the court’s Order because Respondent, Crystal Denise Dudley (“Respondent”), failed to explain the reason for her default and even admitted she had no explanation for her default during the hearing on Respondent’s Motion to Set Aside Default. (Tr. p. 10, lines 14-21). (Ex. 1). Thus, Respondent failed to meet the first requirement needed to set aside an Order of Default, and hearing the instant appeal would be in the best interest of judicial economy.

## FACTUAL AND PROCEDURAL BACKGROUND

This case revolves around a traffic accident which occurred on January 30, 2018, in Mullins, South Carolina. (Compl.). (Ex. 2). Appellant filed this lawsuit against Respondent on July 26, 2018. Appellant duly served Respondent on or about July 31, 2018. Appellant's Affidavit of Service shows that Steve Parker, a retired deputy from Horry County, personally served respondent and Respondent received service of process at her home on July 31, 2018, at 4:22 p.m. (Aff. of Serv.). (Ex. 3).

Respondent failed to answer the Complaint within the thirty-day period allowed by Rule 12(a), of the South Carolina Rules of Civil Procedure, (SCRPC). Appellant moved for default on September 4, 2018, and on September 13, 2018, The Honorable William H. Seals, Jr. Circuit Judge, signed the Order of Default. (Mot. for Default, September 4, 2018; Order of Default). (Ex. 4; Ex. 5). The Order of Default was filed with the Marion County Clerk of Court's Office September 18, 2018. Nearly two months after being duly served, Respondent filed her Answer, and subsequently filed an Amended Answer on September 24, 2018. (Answer & Am. Answer) (Ex. 6 & Ex. 7).

On December 11, 2018, Respondent moved to set aside the Order of Default signed by The Honorable William H. Seals, Jr. (Mot. to Set Aside Entry of Default). (Ex. 8). The court convened a hearing on Respondent's Motion to Set Aside Default on April 15, 2019. (Order Setting Aside Default). (Ex. 9). During the hearing, Respondent conceded that she could not provide the court with an explanation for the failure to respond. (Tr. p. 10, lines 14-21). (Ex. 1). The Honorable Michael G. Nettles, Circuit Court Judge, granted Respondent's motion on April 17, 2019. (Order Setting Aside Default). (Ex. 9). Appellant moved for reconsideration on April 23, 2019. The court denied Appellant's motion on April 30, 2019. (Notice of Mot. and Mot. for Recons.). (Ex. 10).

Appellant filed a Notice of Appeal on May 6, 2019, appealing the Order Setting Aside Default of The Honorable Michael G. Nettles, and the Order denying Appellant's Motion for Reconsideration.

This Court, on June 13, 2019, requested the parties to file a memorandum addressing the appealability of the Order Setting Aside Default.

### **STANDARD OF REVIEW**

The decision to set aside an order of default or a default judgment lies within the sound discretion of the trial judge. *Sundown Operating Co. v. Intedge Indus.*, 383 S.C. 601, 606, 681 S.E.2d 885, 888 (2009). However, when there is a clear showing of abuse of discretion, the Court may overturn the trial court's decision. *Id.* An abuse of discretion occurs when the judge issuing the order was controlled by some error of law or when the order, based on factual, as distinguished from legal conclusions, is without evidentiary support. *Id.* at 607, 681 S.E.2d at 888. As the transcript reflects, Respondent failed to explain the reason for her default, and therefore did not meet the standard required to set aside the default.

### **ARGUMENT**

#### **I. THE ORDER IS IMMEDIATELY APPEALABLE BECAUSE THE CIRCUIT COURT SHOULD HAVE CONSIDERED RESPONDENT'S MOTION UNDER SCRCP 60(b).**

This matter is before the Court based on the trial court's Order Setting Aside Default under Rule 55 of the South Carolina Rules of Civil Procedure. Appellant believes the court below abused its discretion by applying the incorrect standard in determining whether to set aside the Order of Default. The proper standard for an Order of Default signed by a Judge is not Rule 55(c), which applies when the Clerk of Court records an entry of default, but rather, is SCRCP 60(b), which requires a higher standard of excusable neglect, surprise, or inadvertence.

South Carolina Rule of Civil Procedure 55 distinguishes between entry of default and a default judgment. An entry of default is merely an entry by a clerk upon the calendar or file book. Here, the clerk did not enter a default. Instead, a circuit judge specifically reviewed the matter and issued an

Order of Default. Appellant asserts that because this is not an entry of default signed by the clerk that the Court must consider Respondent's motion under SCRCP 60(b) given that the circuit judge reviewed and signed the Order of Default. Appellant believes this Court should remand for the trial court to hold a damages hearing, as requested in Appellant's Affidavit of Default.

Even if this Court finds that Rule 55 is the proper standard to set aside the Order, Respondent still failed to establish the required standard of "good cause" because she did not give a reason for her failure to respond. (Tr. p. 10, lines 14-21). (Ex. 1). When a party fails to respond to a complaint, Rule 55(a) of the South Carolina Rules of Civil Procedure provides that the clerk shall record an entry of default. *Sundown Operating Co. v. Intedge Indus.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009). After the clerk records the entry of default, Rule 55(c) then permits a party to move to set aside the entry of default. *Id.* The party seeking relief from an entry of default must meet the standard of "good cause." *Id.*

A showing of "good cause" requires: (1) the "party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice"; and (2) "once [the] party has put forth a satisfactory explanation for the default, the trial court must also consider: (a) the timing of the motion for relief; (b) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted." *Id.*; See *Regions Bank v. Owens*, 402 S.C. 642, 649, 741 S.E.2d 51, 55 (Ct. App. 2013) (finding that because appellant failed to show good cause for failing to answer the complaint, the court need not consider the *Wham* factors); See also *Sundown*, 383 S.C. at 607-08, 681 S.E.2d at 888 (holding a court need only consider the *Wham* factors "[o]nce a party has put forth a satisfactory explanation for the default").

Here, Respondent failed to put forth any explanation or reason for her failure to answer Appellant's Complaint. Respondent did not present any affidavits, and even admitted there was no explanation for the default:

THE COURT: All right. What about the reason for the delay or the failure of an answer?

MR. HOGSETTE: Your Honor, all I know is in regards to the delay that he [sic] was simply 50 days before the answer was filed in this case. I can't say one way or the other on the record whether or not it was out of forgetfulness of the defendant or on any other third party that might be involved with this case, Your Honor.

(Tr. p. 10, lines 14-21). (Ex. 1). The good cause standard should embody both the reason for the default and the justification for setting aside the entry; if the explanation for the default is insufficient, then there is no justification for setting aside the default.<sup>1</sup> If the reason for the default is not considered, and the court only looks to timing, whether there is a meritorious defense, and the degree of prejudice, a purposeful default nevertheless could be set aside. *Id.*

After Respondent conceded that there was no reason for the default, the court again asked for an explanation: "you still have to g[i]ve a reason why it was not answered." (Tr. p. 11, lines 16-17). (Ex. 11). In response, Respondent seems to argue that the three factors discussed in *Wham* are the exclusive considerations in deciding whether to set aside a default.<sup>2</sup> However, the court in *Wham* cited Harry M. Lightsey & James F. Flanagan, *South Carolina Civil Procedure* 82 (1985), as a source for the factors to consider when setting aside a default.<sup>3</sup> Importantly, Lightsey & Flanagan includes an explanation "for the failure to act promptly as a factor relevant to a Rule 55(c) inquiry." *Id.* citing *Harry M. Lightsey & James F. Flanagan*, *South Carolina Civil Procedure* 82 (1985). Similarly, in

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<sup>1</sup> Eli A. Poliakoff, *Setting Aside Entries of Default: South Carolina Should Require A Reason*, 54 S.C. L. Rev. 477 (2002).

<sup>2</sup> *Wham*, 298 S.C. 462, 381 S.E.2d 499 (Ct. App. 1989).

<sup>3</sup> Poliakoff, *supra* note 2.

*N.H. Ins. Co. v. Bey Corp.*, 312 S.C. 47, 50, 435 S.E.2d 377, 379 (Ct. App. 1993), the South Carolina Court of Appeals also included an explanation for the default as a factor to consider when setting aside a default under Rule 55(c) and Rule 60(b).

Respondent also argues that the negligence of an agent cannot be imputed to the defaulting party. This is not the case. In *Sundown*, 383 S.C. at 609, 681 S.E.2d at 889, the South Carolina Supreme Court held that “the law is clear that an attorney or insurance company’s misconduct is imputable to the client.” See also *Hill v. Dotts*, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct. App. 2001) (“[A] party has a duty to monitor the progress of his case. Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney”).

Thus, because respondent failed to meet the initial burden of explaining the reason for the failure to act promptly, Respondent did not meet the required standard of good cause, and therefore the lower court’s Order was an abuse of discretion. The Court should not dismiss this appeal because it would be futile. The trial court’s Order Setting Aside Default was an error of law and was without evidentiary support because Respondent admitted she had no explanation for her failure to respond.

**II. EVEN IF THE COURT FINDS THE MOTION IMPROPER UNDER SCRCP 60(b), IT AFFECTS THE MERITS OF THE CASE AND PLAINTIFF’S SUBSTANTIAL RIGHTS, AND THUS IS APPEALABLE UNDER S.C. CODE. ANN. § 14-3-330.**

Even if the Court finds that SCRCP 60 is not the proper standard to review the Order of Default, an order setting aside default under Rule 55 may nevertheless be immediately appealed. *Wetzel v. Woodside Dev., Ltd. P’ship*, 364 S.C. 589, 592, 615 S.E.2d 437, 438 (2005). The immediate appealability of an interlocutory order depends on whether the order falls within S.C. Code Ann. § 14-3-330. *Baldwin Const. Co., Inc. v. Graham*, 357 S.C. 227, 593 S.E.2d 146 (2004). Appellant believes that the Order Setting Aside Default falls within two subsections of S.C. Code Ann. § 14-3-

330: (1) decisions involving the merits of the case, and (2) decisions affecting a substantial right. S.C. Code Ann. § 14-3-330(1)(2).

#### **A. Order Affecting the Merits**

First, Intermediate orders involving the merits may be immediately appealed under S.C. Code Ann. § 14-3-330(1). An order that involves the merits is one that “must finally determine some substantial matter forming the whole or a part of some cause of action or defense.” *Mid-State Distribs., Inc. v. Century Imps.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993).

The current issue on appeal involves the merits because it was finally determined that Respondent conceded liability when she failed to respond to Plaintiff’s Complaint, and The Honorable William H. Seals Jr., signed the Order of Default. See *Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 241-42, 246 S.E.2d 880, 882, (1978) (stating that, by defaulting, the defendant has conceded liability). If Appellant is not allowed to appeal the Order Setting Aside Default, Appellant will suffer prejudice as Respondent will be rewarded for disregarding court deadlines and rules and will contest the cause of the accident.

#### **B. Orders Affecting A Substantial Right**

Additionally, interlocutory orders may be immediately appealed under § 14-3-330(2) if it affects a substantial right. An order affects a substantial right when it “discontinue[s] an action, prevent[s] an appeal, grant[s] or refuse[s] a new trial, or strike[s] out an action or defense.” *Ex parte Wilson*, 367 S.C. 7, 13-14, 625 S.E.2d 205, 208 (2005).

Here, the Order Setting Aside Default affects a substantial right of the Appellant, as required by S.C. Code Ann. § 14-3-330(2). “By defaulting, a defendant forfeits his ‘right to answer or otherwise plead to the complaint.’ In essence, the defaulting defendant has conceded liability.” *Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 241-42, 246 S.E.2d 880, 882, (1978). If Appellant cannot

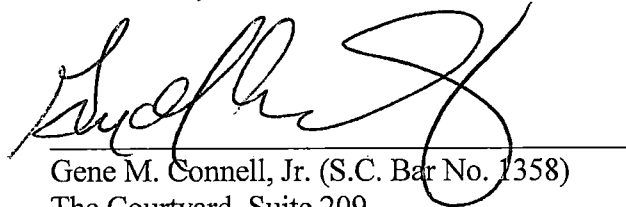
immediately appeal, Respondent will contest liability after disregarding Appellant's Service of Process and Complaint. Court deadlines and rules "serve important social goals, and a party should not be permitted to flout them with impunity." Eli A. Poliakoff, *Setting Aside Entries of Default: South Carolina Should Require A Reason*, 54 S.C. L. Rev. 477 (2002). Allowing Respondent to now contest liability, after disregarding her duties and failing to state a single reason for her default, affects the substantial rights of Appellant and rewards Respondent for her negligent actions.

### CONCLUSION

By entering the Order of Default, Respondent conceded liability as to the accident, and Appellant should not be required to argue liability. The Order Setting Aside Default, entered after Respondent admitted having no explanation for failing to respond, was an abuse of discretion and affected the substantial rights of Appellant. Appellant asks this Court to permit the instant appeal, or in the alternative, remand to the trial court with instructions to hold a damages hearing.

Respectfully submitted,

KELAHER, CONNELL & CONNOR, P.C.



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**Attorney for Appellant**

July 16, 2019  
Surfside Beach, South Carolina

1 that the clerk's do it here. In Horry County, there's so  
2 many cases the clerk's do the entry by default almost  
3 daily, but this is a judgment by default and not an entry.  
4 And that's a big difference in the rule and it sets it  
5 clearly out. For instance, when they talk about judgment  
6 by default, it's liquidated damages you got certain things  
7 to do. And then it says that all other cases then you got  
8 to have a damages hearing and so that's where are in this  
9 case. So the defendant has to prove excusable negligent.  
10 And there is no affidavit in this case of excusable  
11 neglect or any reason. We still don't know why it wasn't  
12 answered properly. And so, Your Honor, respectfully I  
13 don't think that that would carry the debt here.

14 THE COURT: All right. What about the reason  
15 for the delay or the failure of an answer?

16 MR. HOGSETTE: Your Honor, all I know is in  
17 regards to the delay that he was simply 50 days before the  
18 answer was filed in this case. I can't say one way or the  
19 other on the record whether or not it was out of the  
20 forgetfulness of the defendant or on any other third party  
21 that might be involved with the case, Your Honor. But to  
22 speak to Mr. Connell's point, the Supreme Court 2009  
23 Sundown vs. Intedge 383 S.C. 601 talked about the  
24 differences and when you apply the standard of 55(c)  
25 versus Rule 60. And in that they talked about the default

STATE OF SOUTH CAROLINA  
COUNTY OF MARION

IN THE COURT OF COMMON PLEAS  
TWELFTH JUDICIAL CIRCUIT  
C/A NO. 2018-CP-33-

James Washington, Jr., )  
 )  
 Plaintiff(s), )  
 )  
 vs. )  
 )  
 Crystal Denise Dudley, )  
 )  
 Defendant(s). )

2018 CP33 0 0 53 4

COMPLAINT  
(Wreck Case - Negligence)  
JURY TRIAL

The Plaintiff, above-named, complaining of the Defendant herein, would allege:

1. That the Plaintiff is a citizen and resident of the County of Marion, State of South Carolina, and at the time of the occurrence herein mentioned was the driver and owner of the 2012 automobile.

2. That, upon information and belief, the Defendant is a citizen and resident of the County of Marion, State of South Carolina, and at the time of the occurrence herein mentioned was the driver and owner of the 2007 automobile.

3. That on or about January 30, 2018, at approximately 3:40 p.m., the Plaintiff was driving his automobile on Church Street in the City of Mullins, County of Marion, State of South Carolina, when the Defendant failed to stop after Plaintiff had control of the intersection and thus collided with the Plaintiff's vehicle.

4. That at the time and place mentioned above, the Defendant was negligent, reckless, willful and wanton, in one or more of the following particulars, to wit:

- a. In operating the said motor vehicle at a rate of speed which was excessive for the circumstances then prevailing;
- b. In failing to keep a proper lookout;
- c. In failing to maintain proper control over the aforesaid vehicle;

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CLERK OF COURT  
TWELFTH JUDICIAL CIRCUIT  
MARION COUNTY SOUTH CAROLINA

- d. In failing properly to equip the said motor vehicle with adequate and safe brakes; and, if so properly equipped, in failing properly to utilize them;
- e. In failing properly to equip the said motor vehicle with adequate and safe steering mechanisms; and, if so properly equipped, in failing properly to utilize same;
- f. In failing properly to equip the said motor vehicle with an adequate signaling device or horn; and, if so properly equipped, in failing properly to utilize same;
- g. In failing to take any evasive action, by any means, to keep from striking the Plaintiff;
- h. In failing properly to observe the road and traffic conditions;
- i. In failing to yield the right-of-way to the Plaintiff;

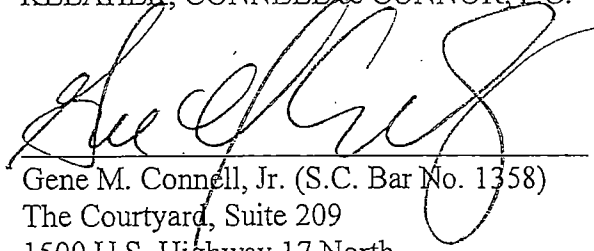
any or all of which were the direct and proximate cause of the injuries and damages suffered by the Plaintiff herein, said acts being in violation of the statute laws of the City of Mullins, State of South Carolina.

5. That as a direct and proximate result of the Defendant's negligence, recklessness, willfulness and wantonness, as aforesaid, Plaintiff's 2012 Chevrolet vehicle was damaged, which cost large sums to repair, which caused Plaintiff to be without the use of his vehicle for a great period of time and which caused Plaintiff's vehicle to be greatly depreciated in value.

6. That as a further direct and proximate result of the Defendant's negligence, recklessness, willfulness and wantonness, as aforesaid, Plaintiff was thrown about the interior of the vehicle and suffered great bodily injury, which caused Plaintiff, and will cause Plaintiff in the future, to incur medical expense, to suffer tremendous pain and suffering and to lose time from work and lost wages.

7. The Plaintiff is informed and does believe that she is entitled to judgment against the Defendant for actual and punitive damages, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

KELAHER, CONNELL & CONNOR, P.C.



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**Attorney for Plaintiff**

June 27, 2018  
Surfside Beach, South Carolina

FILED

STATE OF SOUTH CAROLINA

COUNTY OF MARION

JAMES WASHINGTON, JR.,

Plaintiff,

vs.

CRYSTAL DENISE DUDLEY,

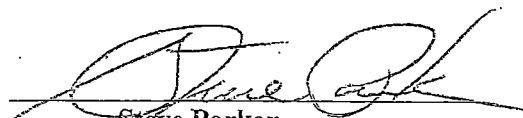
Defendants.

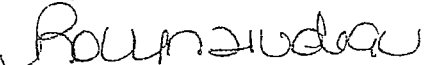
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IN THE COURT OF COMMON PLEAS  
THE TWELFTH JUDICIAL CIRCUIT  
MARION COUNTY SC  
CASE NO: 2018-CP-33-00534  
CHRISTY N GRAY  
CLERK OF COURT

AFFIDAVIT OF SERVICE ON  
CRYSTAL DENISE DUDLEY

COPY

PERSONALLY APPEARED BEFORE ME, the undersigned deponent, who being duly sworn says that he served the *SUMMONS, COMPLAINT, INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS* to Defendants in this action on **CRYSTAL DENISE DUDLEY** by delivering same to and leaving with **CRYSTAL DENISE DUDLEY** personally a copy of the pleadings listed above at *HOME, 3407 HAYES STREET, MULLINS, SC 29575* on *JULY 31, 2018 at 4:22 pm o'clock*, that deponent knows the person so served, and that deponent is not a part of this action, is not less than eighteen (18) years of age and has no interest therein or connection therewith.

Deponent (signature):   
Steve Parker

Sworn to and Subscribed before me  
this 2nd day of August, 2018  
  
Notary Public for South Carolina  
My Commission Expires: 09-12-2023

STATE OF SOUTH CAROLINA 2018 SEP 16 10 47 AM IN THE COURT OF COMMON PLEAS  
COUNTY OF MARION TWELFTH JUDICIAL CIRCUIT  
C/A NO: 2018-CP-33-00534

James Washington, Jr.,

Plaintiff(s),

vs.

Crystal Denise Dudley,

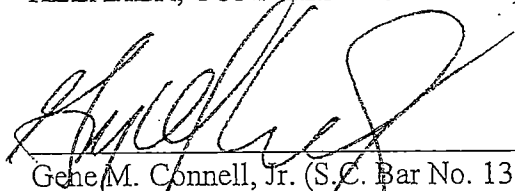
Defendant(s).

MOTION FOR DEFAULT

YOU WILL PLEASE TAKE NOTICE the undersigned moves the Court for an Order of Default. The basis of this motion is that Defendant was served with the Summons and Complaint on July 31, 2018; that more than 30 days have elapsed since service of the Summons and Complaint; and that Defendant has failed to answer the Complaint. Plaintiff attaches a copy of the Affidavit of Default.

Accordingly, Plaintiff moves the Court that Defendant be held in default and for such other and further relief as the Court may deem just, necessary and proper.

KELAHER, CONNELL & CONNOR, P.C.



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Attorney for Plaintiff

September 4, 2018  
Surfside Beach, South Carolina

STATE OF SOUTH CAROLINA 2018 SEP 15 IN THE COURT OF COMMON PLEAS  
COUNTY OF MARION TWELFTH JUDICIAL CIRCUIT  
C/A NO. 2018-CP-33-00534

James Washington, Jr.,

Plaintiff(s),

vs.

Crystal Denise Dudley,

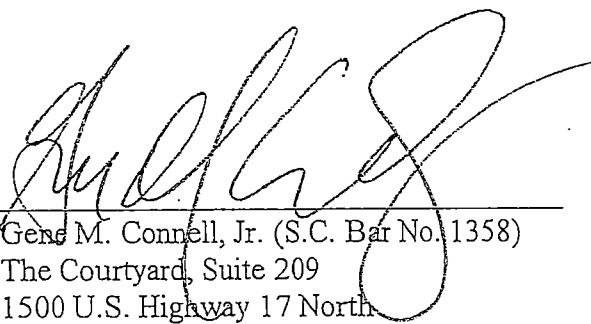
Defendant(s).

AFFIDAVIT OF DEFAULT

PERSONALLY appeared before me Gene M. Connell, Jr., who being duly sworn, deposes and says that he is the attorney for the Plaintiff in the above-captioned action, that pursuant to the Affidavit of Service of Steve Parker, attached hereto, the Summons, Complaint, Interrogatories and Request for Production of Documents were duly served on the Defendant, Crystal Denise Dudley at 3407 Hayes Street, Mullins, SC 29575, on the 31<sup>st</sup> day of July, 2018; that more than thirty (30) days have elapsed since the service of said pleadings; that no Answer, Motion or Notice of Appearance has been made therein; and that said Defendant is now in default. That said Defendant is not a member of the armed services of the United States, as is contemplated under the Soldiers' and Sailors' Relief Act, as amended.

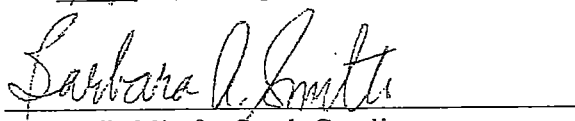
Plaintiff believes he is entitled to an Order judging the Defendant to be in default for want of an appearance in this action, and, pursuant to provisions for such amounts as set out in the prayer of the Complaint.

(SIGNATURE ON FOLLOWING PAGE)



Gene M. Connell, Jr. (S.C. Bar No. 1358)  
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[gconnell@classactlaw.net](mailto:gconnell@classactlaw.net)  
Attorney for Plaintiff

SWORN AND SUBSCRIBED before me,  
this 14th day of September, 2018.



Notary Public for South Carolina  
My Commission Expires: 3-12-24

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STATE OF SOUTH CAROLINA: 15  
COUNTY OF MARION

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MARION COUNTY SC  
CHRISTY H. GRAY  
CLERK OF COURT

IN THE COURT OF COMMON PLEAS  
TWELFTH JUDICIAL CIRCUIT  
C/A NO. 2018-CP-33-00534

James Washington, Jr. )

Plaintiff, )

vs. )

ORDER OF DEFAULT

Crystal Denise Dudley, )


Defendant. )

This matter comes before the Court based on Plaintiff's Affidavit of Default submitted by Attorney Gene M. Connell, Jr. It being made to appear that Plaintiff's Summons and Complaint were filed on or about July 26, 2018 and were duly served on Defendant, Crystal Denise Dudley, by personal service at 3407 Hayes Street, Mullins, SC 29575, on the 31<sup>st</sup> of July, 2018; that more than thirty (30) days have elapsed since the service of said pleadings; that no Answer, Motion or Notice of Appearance has been made therein; and that said Defendant is now in default.

Accordingly,

IT IS ORDERED that Defendant Crystal Denise Dudley is hereby declared to be in default.

AND IT IS SO ORDERED.

  
Circuit Court Judge  
Twelfth Judicial Circuit

September 13, 2018  
Marion, South Carolina.

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 )  
 COUNTY OF MARION ) TWELFTH JUDICIAL CIRCUIT  
 )  
 ) C/A No.: 2018-CP-33-00534  
 )  
 James Washington, Jr., )  
 )  
 Plaintiff, )  
 v. ) ANSWER  
 ) (Jury Trial Demanded)  
 )  
 Crystal Denis Dudley, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

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Defendant Crystal Denis Dudley ("Defendant") hereby answers and respectfully shows unto the Court:

**FOR A FIRST DEFENSE**

1. Except as specifically admitted, qualified, or explained, Defendant denies the allegations and demands strict proof of each allegation.
2. Upon information and belief, Defendant admits the allegations contained in Paragraphs 1-2

**AS AN ADDITIONAL DEFENSE**  
**(Comparative Negligence)**

3. FURTHER ANSWERING, any injury and damage sustained by Plaintiff may have been caused by the negligence or willfulness of Plaintiff, combining, concurring, and contributing with the negligence or willfulness, if any, by others. Because Plaintiff's negligence or willfulness may be greater than the alleged negligence or willfulness of one or more adverse parties, Plaintiff may be barred from recovery. Further, any injury and damage sustained by Plaintiff may have been caused by the negligence or willfulness of Plaintiff, combining, concurring, and contributing with the negligence or willfulness, if any, by others. Therefore, the Court should reduce any recovery awarded to Plaintiff for the alleged

injuries and damage based upon the percentage of negligence or willfulness attributed to Plaintiff.

**AS AN ADDITIONAL DEFENSE**  
(Reservation of Rights)

4. FURTHER ANSWERING, Defendant has not had an opportunity to conduct a sufficient investigation or engage in adequate discovery about the allegations of this lawsuit. Defendant gives notice of the intent to assert any further affirmative defenses that any investigation supports, including, but not limited to, defenses that the action is barred in whole or in part by any applicable statute, contract, release, covenant, or the doctrine of laches. Thus, Defendant reserves the right to amend this pleading to assert any such defenses.

**AS AN ADDITIONAL DEFENSE**  
(Punitive Damages)

5. FURTHER ANSWERING, any award of punitive damages would violate the constitutional safeguards provided by the Due Process Clause of the Fourteenth Amendment of the United States Constitution and under the Due Process Clause of Article I, Section 3 of the South Carolina Constitution because the determination of punitive damages does not bear any reasonable relationship to the amount of actual damages, if any, suffered by or awarded.

**AS AN ADDITIONAL DEFENSE**  
(Third Party)

6. FURTHER ANSWERING, any injury or damage sustained was due to and caused by the negligence, gross negligence, willfulness, wantonness, or carelessness on the part of some third party over whom Defendant had or has no authority or control.

**AS AN ADDITIONAL DEFENSE**  
(Set-Off)

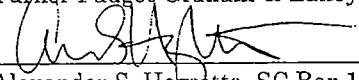
7. FURTHER ANSWERING, the amount of any and all settlement proceeds obtained from any other party shall constitute a set off against any judgment.

AS AN ADDITIONAL DEFENSE  
(Improper Service)

8. FURTHER ANSWERING, Defendant alleges Plaintiff may not properly served the Summons and Complaint for this lawsuit; therefore, Defendant reserves the right to move pursuant to Rules 12(b)(1), 12(b)(2), 12(b)(4), and 12(b)(5) of the South Carolina Rules of Civil Procedure to dismiss the lawsuit.

WHEREFORE, having answered, Defendant asks this Court to dismiss the Complaint and to grant such other and further relief as this Court deems just and proper.

Turner Padgett Graham & Laney, P.A.

  
\_\_\_\_\_  
Alexander S. Hogsette, SC Bar 101244  
Post Office Box 5478  
Florence, South Carolina 29502  
Direct: (843) 656-4454  
Fax: (843) 413-5852  
[AHogsette@turnerpadgett.com](mailto:AHogsette@turnerpadgett.com)

Florence, South Carolina

September 19, 2018

ATTORNEYS FOR DEFENDANT

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 )  
 COUNTY OF MARION ) TWELFTH JUDICIAL CIRCUIT  
 )  
 ) C/A No.: 2018-CP-33-00534  
 )  
 James Washington, Jr., )  
 )  
 Plaintiff, )  
 v. )  
 )  
 Crystal Denis Dudley, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

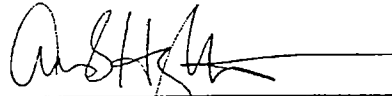
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 2018 SEP 19 PM 12:41  
 CLERK OF COURT  
 TWELFTH JUDICIAL CIRCUIT  
 MARION COUNTY  
 SOUTH CAROLINA

CERTIFICATE OF SERVICE

On September 19, 2018, I mailed a copy of Defendant's Answer, Interrogatories and Requests for Production to

Gene M. Connell, Jr.  
 The Courtyard, Suite 209  
 1500 U.S. Highway 17 North  
 Post Office Drawer 14547  
 Surfside Beach, South Carolina 29587

Attorneys for Plaintiff

  
 \_\_\_\_\_  
 Alexander S. Hogsette

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF MARION	)	TWELFTH JUDICIAL CIRCUIT
	)	
	)	C/A No.: 2018-CP-33-00534
James Washington, Jr.,	)	
	)	
Plaintiff,	)	<b>AMENDED ANSWER</b>
v.	)	<b>(Jury Trial Demanded)</b>
	)	
Crystal Denise Dudley,	)	
	)	
Defendant.	)	

2018 SEP 24 AM 10:32  
 MARION COUNTY SC  
 CHRISTY M. GRAY  
 CLERK OF COURT

FILED

Defendant Crystal Denis Dudley ("Defendant") hereby answers and respectfully shows unto the Court:

**FOR A FIRST DEFENSE**

1. Except as specifically admitted, qualified, or explained, Defendant denies the allegations and demands strict proof of each allegation.
2. Upon information and belief, Defendant admits the allegations contained in Paragraphs 1-2 of the Complaint.
3. Defendant admits only so much of the allegations contained in Paragraph 3 of the Complaint that Plaintiff and Defendant were involved in an automobile accident. Defendant lacks current knowledge sufficient to admit or deny the remaining allegations contained in Paragraph 3 of the Complaint and, on this basis, denies same.
4. Defendant denies the allegations contained in Paragraphs 4-7 of the Complaint, including all sub-paragraphs.
5. To the extent a response is necessary, Defendant denies the allegations and prayer for relief contained in the "Wherefore" clause of the Complaint.

**AS AN ADDITIONAL DEFENSE**  
(Comparative Negligence)

6. FURTHER ANSWERING, any injury and damage sustained by Plaintiff may have been caused by the negligence or willfulness of Plaintiff,

combining, concurring, and contributing with the negligence or willfulness, if any, by others. Because Plaintiff's negligence or willfulness may be greater than the alleged negligence or willfulness of one or more adverse parties, Plaintiff may be barred from recovery. Further, any injury and damage sustained by Plaintiff may have been caused by the negligence or willfulness of Plaintiff, combining, concurring, and contributing with the negligence or willfulness, if any, by others. Therefore, the Court should reduce any recovery awarded to Plaintiff for the alleged injuries and damage based upon the percentage of negligence or willfulness attributed to Plaintiff.

**AS AN ADDITIONAL DEFENSE**  
**(Reservation of Rights)**

7. FURTHER ANSWERING, Defendant has not had an opportunity to conduct a sufficient investigation or engage in adequate discovery about the allegations of this lawsuit. Defendant gives notice of the intent to assert any further affirmative defenses that any investigation supports, including, but not limited to, defenses that the action is barred in whole or in part by any applicable statute, contract, release, covenant, or the doctrine of laches. Thus, Defendant reserves the right to amend this pleading to assert any such defenses.

**AS AN ADDITIONAL DEFENSE**  
**(Punitive Damages)**

8. FURTHER ANSWERING, any award of punitive damages would violate the constitutional safeguards provided by the Due Process Clause of the Fourteenth Amendment of the United States Constitution and under the Due Process Clause of Article I, Section 3 of the South Carolina Constitution because the determination of punitive damages does not bear any reasonable relationship to the amount of actual damages, if any, suffered by or awarded.

**AS AN ADDITIONAL DEFENSE**  
**(Third Party)**

9. FURTHER ANSWERING, any injury or damage sustained was due to and caused by the negligence, gross negligence, willfulness, wantonness, or

carelessness on the part of some third party over whom Defendant had or has no authority or control.

**AS AN ADDITIONAL DEFENSE**  
**(Set-Off)**

10. FURTHER ANSWERING, the amount of any and all settlement proceeds obtained from any other party shall constitute a set off against any judgment.

**AS AN ADDITIONAL DEFENSE**  
**(Improper Service)**

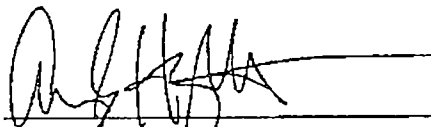
11. FURTHER ANSWERING, Defendant alleges Plaintiff may not properly served the Summons and Complaint for this lawsuit; therefore, Defendant reserves the right to move pursuant to Rules 12(b)(1), 12(b)(2), 12(b)(4), and 12(b)(5) of the South Carolina Rules of Civil Procedure to dismiss the lawsuit.

**AS AN ADDITIONAL DEFENSE**  
**(Failure to State a Claim)**

12. FURTHER ANSWERING, Defendant asserts that Plaintiff has failed to state a claim and this lawsuit should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

WHEREFORE, having answered, Defendant asks this Court to dismiss the Complaint and to grant such other and further relief as this Court deems just and proper.

Turner Padget Graham & Laney, P.A.



Alexander S. Hogsette, SC Bar 101244  
Post Office Box 5478  
Florence, South Carolina 29502  
Direct: (843) 656-4454  
Fax: (843) 413-5852  
[AHogsette@turnerpadget.com](mailto:AHogsette@turnerpadget.com)

Florence, South Carolina

September 20, 2018

ATTORNEYS FOR DEFENDANT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF MARION	)	Docket No.: 2018-CP-33-00534
	)	
James Washington, Jr.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	<b>CERTIFICATE OF SERVICE</b>
	)	
Crystal Denise Dudley,	)	
	)	
Defendant.	)	

---

The undersigned, Lisa A. Potter, an employee of Turner Padgett Graham & Laney P.A. hereby certifies that she has served on this the 20<sup>th</sup> day of August 2018, an *Amended Answer* upon counsel by placing same in the United States Mail, postage prepaid, addressed as follows:

Gene M. Connell, Jr., Esquire  
 Kelaher, Connell & Connor, P.C.  
 PO Drawer 14547  
 Surfside Beach, SC 29587

  
 \_\_\_\_\_  
 Lisa A. Potter – Legal Assistant

**FILED**  
 2018 SEP 24 AM 10:32  
 MARION COUNTY SC  
 CHRISTY M. GRAY  
 CLERK OF COURT

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 )  
 COUNTY OF MARION ) C/A No.: 2018-CP-33-00534  
 )  
 James Washington Jr., )  
 )  
 Plaintiff, ) NOTICE OF MOTION AND MOTION  
 ) TO SET ASIDE ENTRY OF DEFAULT  
 v. )  
 )  
 Crystal Denise Dudley, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

TO: GENE CONNELL JR., ESQUIRE, ATTORNEY FOR PLAINTIFF:

Defendant Crystal Denis Dudley (“Defendant”), by and through the undersigned, hereby move before the Court, as soon as counsel may be heard, for an Order pursuant to Rule 55 of the South Carolina Rules of Civil Procedure. Specifically, Defendant asserts that the Court should find that good cause exists to set aside the entry of default in the above-captioned matter. Counsel reserves the right to supplement this motion with a memorandum and affidavits prior to a hearing on same.

TURNER PADGET

s/Alexander S. Hogsette  
 Alexander S. Hogsette, SC Bar No. 101244  
 Post Office Box 5478  
 Florence, South Carolina 29502  
 Direct: (843) 656-4454  
 Fax: (843) 413-5852  
 AHogsette@turnerpadget.com  
 ATTORNEYS FOR DEFENDANT

Florence, South Carolina  
 December 11 2018.

STATE OF SOUTH CAROLINA  
COUNTY OF MARION

James Washington, Jr.,  
Plaintiff,

v.

Crystal Denise Dudley,  
Defendant.

IN THE COURT OF COMMON PLEAS  
TWELFTH JUDICIAL CIRCUIT

C/A No.: 2018-CP-33-00534

**ORDER SETTING ASIDE DEFAULT**

This matter comes before the Court by way of Defendant's Motion to Set Aside Default. The Court finds that for good cause shown the default entered in this case should be set aside and Defendant allowed to answer.

**FACTUAL BACKGROUND**

The present case was filed by the Plaintiff on July 26, 2018. This case arose from an automobile accident which occurred in Mullins, South Carolina on January 30, 2018. Plaintiff's affidavit of service shows that the Defendant received service of process on July 31, 2018 at her home and that she was personally served. Defendant failed to answer the complaint within the thirty (30) day time period allowed by Rule 12(a), SCRCF. Plaintiff moved for entry of default on September 4, 2018. The entry of default was signed on September 13, 2018 by the Honorable William H. Seals, Jr., Circuit Judge. The entry of default was filed with the Marion County Clerk of Court's Office on September 18, 2018. Defendant filed her answer September 19, 2018 and subsequently filed an amended answer on September 24, 2018. Defendant then moved on

December 11, 2018 for the entry of default signed by Judge Seals to be set aside. The Court convened a hearing on this motion on April 15, 2019 at the Marion County Courthouse.

### ANALYSIS

The first matter for the Court is which standard of review is appropriate for this case. Defendant urges that this case be reviewed under the “good cause” standard found in Rule 55(c), SCRCF. However, Plaintiff argues that because the entry of default was denominated an Order of Default, and was signed by a Circuit Judge, that the standard for default judgments found in Rule 60(b), SCRCF, is appropriate. The Court finds that the appropriate standard is “good cause” as found in Rule 55(c).

As a first matter the Court must turn to language of the rule itself. Rule 55(c) states “For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).” “In interpreting the meaning of the South Carolina Rules of Civil Procedure, the Court applies the same rules of construction used to interpret statutes.” *Maxwell v. Genez*, 356 S.C. 617, 620, 591 S.E.2d 26, 27 (2003). “If a rule's language is plain, unambiguous, and conveys a clear meaning, interpretation is unnecessary and the stated meaning should be enforced.” *Id.* Rule 55(c) is clearly unambiguous, the standard to be used is determined by whether the order in question is an entry of default or a default judgment. Plaintiff contends that the order of default is a default judgment because it was signed by a Circuit Judge and not the Clerk of Court. The Court finds this argument unpersuasive. “The entry of default is an official recognition of the failure to appear or otherwise respond, but is not a judgment by default. Judgment by default is not properly entered until damages are determined.” *Beckham v. Durant*, 300 S.C. 329, 331, 387 S.E.2d 701, 703 fn. 2

(Ct. App. 1989).<sup>1</sup> It is undisputed here that no damages were set or determined by Judge Seals in his September 13 order. Therefore, as this is not a default judgment, but an entry of default, the Court will proceed under the “good cause” standard found in Rule 55(c).

“The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial judge.” *Sundown Op. Co., Inc. v. Intedge Indus., Inc.*, 383 S.C. 601, 606, 681 S.E.2d 885, 888 (2009). The standard under Rule 55(c) requires that the moving party give an explanation why the setting aside of the default would serve the interests of justice. *Id* at 607, 681 S.E.2d at 888. “Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted.” *Id* at 607-08, 681 S.E.2d at 888 (citing *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct. App. 1989)). Counsel for the Defendant has indicated to the Court that reason for the delay was some confusion on the part of the insured and the insurance company as to the complaint. The Court finds that this, when considered in light of the *Wham* factors, is a satisfactory explanation. As to the *Wham* factors the Court finds that each points towards setting aside the default in this case. Turning to the first factor the Court finds that Defendant was diligent once it found that default had been entered. The Defendant made her answer the day after the entry of default, and moved to set aside the default less than three months later. The Court finds that this factor weighs in favor of setting aside the default. As to the second factor the Court finds that Defendant does indeed have a meritorious defense. “To establish a meritorious defense, a party is not required to show an absolute defense.” *Micronics*,

---

<sup>1</sup> Indeed the Court of Appeals in *Beckham* made it clear that it make no difference whether the entry of default is signed by a judge or by the clerk of court. In *Beckham* the entry of default was actually made by a Circuit Judge after a hearing.

*Inc. v. S.C. Dep't of Revenue*, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001). “A meritorious defense need not be perfect nor one which can be guaranteed to prevail at a trial. It need be only one which is worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation and discussion or a real controversy as to essential facts arising from conflicting or doubtful evidence.” *Graham v. Town of Loris*, 272 S.C. 442, 453, 248 S.E.2d 594, 599 (1978). After a careful review of the factual allegations in the Plaintiff’s complaint the Court finds that the Defendant has at least one meritorious defense, namely comparative negligence. Therefore, the second *Wham* factor weighs in favor of setting aside the default. Finally, turning to the third factor the Court finds that the Defendant will suffer no prejudice. Plaintiff argues that he will suffer prejudice because he will be forced to litigate the cause of the accident. Plaintiff cites to *Hill v. Dotts*, 345 S.C. 304, 547 S.E.2d 894 (Ct. App. 2001), for this proposition. The Court finds that *Hill* is distinguishable in this case. In *Hill* the Court of Appeals was considering a default judgment, not an entry of default. As the Court of Appeals recognized the factors are construed more liberally when considering an entry of default as opposed to a default judgment. *Id.* at 309-10, 547 S.E.2d at 897 fn. 1. If the Court were to consider the Plaintiff prejudiced simply because the Plaintiff will now have to contest liability this would weigh against setting aside a default in almost all cases. Such a position would be inconsistent with the general policy of South Carolina to resolve issues on the merits instead of on technicalities. *Micronics*, 345 S.C. at 511, 548 S.E.2d at 226. Therefore, the Court finds that Plaintiff would suffer no appreciable prejudice in this case and finds that the third *Wham* factor weighs in favor of setting aside the default.

#### CONCLUSION

Therefore, for the reasons stated above the Court finds that Defendant's Motion to Set  
Aside Default should be **GRANTED.**

AND IT IS SO ORDERED!

April 17, 2019  
Marion, South Carolina

/s/ Michael G. Nettles  
Presiding Judge, 12th Judicial Circuit



Marion Common Pleas

**Case Caption:** James Washington Jr VS Crystal Denise Dudley

**Case Number:** 2018CP3300534

**Type:** Order/Other

So Ordered

s/ The Honorable Michael G. Nettles #2140

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STATE OF SOUTH CAROLINA  
 COUNTY OF MARION

IN THE COURT OF COMMON PLEAS  
 TWELFTH JUDICIAL CIRCUIT  
 C/A NO. 2018-CP-33-00534

James Washington, Jr., )  
 )  
 Plaintiff(s), )  
 )  
 vs. )  
 )  
 Crystal Denise Dudley, )  
 )  
 Defendant(s). )  
 )

NOTICE OF MOTION AND  
 MOTION FOR RECONSIDERATION

YOU WILL PLEASE TAKE NOTICE the undersigned moves the Court for an Order reconsidering the Court’s Order Setting Aside Default. The basis of this motion is that the good cause standard for setting aside a default requires the party seeking relief from an entry of default to provide an explanation for the default and give reasons why vacation of the default’s entry would serve the interest of justice. Plaintiff attaches a copy of the case of *Regions Bank v. Owens*, 402 S.C. 642, 741 S.E. 2d 51 (S.C. App. 2013) which provides in pertinent part:

Once a party seeking relief from an entry of default by showing of good cause has put forth a satisfactory explanation for the default, the trial court must consider: (1) the timing of the motion for relief; (2) whether defendant had a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted: The trial court need not make specific findings of fact for each factor if there is sufficient evidentiary support on the record for the finding of the lack of good cause.

See also, *Limehouse v. Hulsey*, 397 S.C. 49, 723 S.E.2d 211 rev. 404 S.C. 93 744 S.E.2d 566 (20013) (A good cause standard for setting aside a default requires, as a threshold burden, a party to put forth “an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice.”

Plaintiff believes in this case that good cause has not been shown because no affidavits were presented. In fact, Defendant's attorney was asked by the Court the reason for the default and could give no reason. Counsel could offer no explanation as to why the default occurred. He had not presented any affidavit, nor had he been in contact with the Defendant. Further, he could not say whether this was the Defendant's fault or the insurer's fault.

Accordingly, Plaintiff requests the Court reconsider the Order Setting Aside Default because good cause has not been shown.

Respectfully submitted,

KELAHER, CONNELL & CONNOR, P.C.

s/Gene M. Connell, Jr.

Gene M. Connell, Jr. (S.C. Bar No. 1358)  
The Courtyard, Suite 209  
1500 U.S. Highway 17 North  
Post Office Drawer 14547  
Surfside Beach, South Carolina 29587-4547  
(843) 238-5648 (phone)  
(843) 238-5050 (facsimile)  
[gconnell@classactlaw.net](mailto:gconnell@classactlaw.net)  
**Attorney for Plaintiff**

April 23, 2019  
Surfside Beach, South Carolina

402 S.C. 642  
741 S.E.2d 51

**REGIONS BANK, Plaintiff,**  
v.

**William S. OWENS, David S. Hostetler,  
Roland G. Paddy and Greer State Bank,  
Defendants,**

**of whom, William S. Owens is the  
Appellant,  
and**

**Regions Bank, Roland G. Paddy and  
Greer State Bank are the Respondents.  
Appellate Case No. 2011-193586.**

**No. 5113.**

**Court of Appeals of South Carolina.**

**Heard Oct. 1, 2012.**

**Decided April 10, 2013.**

[741 S.E.2d 52]

Gene McCain Connell, Jr., of Kelaher Connell & Connor, PC, of Surfside Beach; and Cheevin T. Lex Gardner, of Gardner Law Office, of Myrtle Beach, for Appellant.

Stephen Peterson Groves, Sr. and Robert Bruce Wallace, both of Nexsen Pruet, LLC, of Charleston; William Wesley Johnson, Jr., of Barfield & Johnson, LLC, of Lexington; and Sherman Brook Fowler, of Carter Smith Merriam Rogers & Traxler, PA, of Greenville, for Respondents.

**LOCKEMY, J.**

[402 S.C. 644]In this appeal from a mortgage foreclosure action, William Owens argues the master-in-equity erred in denying his motion to set aside entry of default. Owens contends the master erred in finding he failed to demonstrate good cause for failing to answer Regions Bank's (the Bank)

summons and complaint as required by Rule 55(c), SCRPC. We affirm.

**FACTS/PROCEDURAL BACKGROUND**

On June 24, 2005, the Bank's records indicate it loaned Owens, Roland G. Paddy, and David S. Hostetler (collectively, Defendants) \$700,000 to purchase approximately one hundred acres of land (the property) in Lexington County. In consideration for the loan, Defendants executed and delivered a promissory note and mortgage to the Bank. On March 31, 2009, following the maturity of the promissory note and in consideration for an extension of the maturity date to July 1, 2009, a second promissory note and assignment of rents was executed in the amount of \$642,564 to the Bank. Defendants failed to pay the loan by July 1, 2009, thereby defaulting under the note.

On December 1, 2009, the Bank filed a mortgage foreclosure action seeking to recover the outstanding debt of \$683,154.75 [402 S.C. 645] as well as attorney's fees and costs. Paddy filed and served his answer on January 15, 2010. Paddy admitted participating in the loan transaction but denied the outstanding loan amount and the Bank's entitlement to attorney's fees and costs. Owens and Hostetler failed to answer. Owens was personally served with the foreclosure pleadings at his business address on January 26, 2010. After Owens failed to file an answer, the case was referred to the master, and a final hearing was set for July 19, 2010. Counsel for the Bank filed an affidavit of default against Owens on March 19, 2010. The Bank notified Owens of the final foreclosure hearing by letter on June 22, 2010.

On July 16, 2010, Owens filed a motion to set aside entry of default, for leave to file an

[741 S.E.2d 53]

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answer, and for a continuance. Owens asserted Paddy misrepresented he would answer on behalf of himself and Owens. In his proposed answer, Owens denied he participated in the loan transaction, denied he signed the loan documents, and alleged the Bank was negligent in processing the loan without his consent. Owens also asserted a counterclaim alleging the Bank violated the South Carolina Unfair Trade Practices Act.

The Bank deposed Owens, Paddy, and the loan closing attorney, Michele Paddy Refosco.<sup>1</sup> According to Owens, Paddy approached him about investing \$100,000 in a "deal." Although Owens denied he knew the deal was to purchase the property, Owens stated Paddy had discussed the property with him and he understood Paddy intended to "turn around and sell" the property to a bottling company. Owens testified Paddy told him he could expect a significant return on his investment. Owens recalled he discussed the deal with Paddy for several months before he gave Paddy the \$100,000 to invest. Owens and Paddy did not sign a contract or partnership agreement.

Owens denied purchasing the property, owning the property, or agreeing to participate in any financing for the property. According to Owens, he did not attend the loan closing at Refosco's office, and the signature on the 2005 promissory note is not his. Owens admitted he signed "a bunch of papers" Paddy brought to his office without reading them, but [402 S.C. 646]he could not recall what type of documents he signed. Owens testified he contacted Paddy after receiving the foreclosure summons and complaint, and Paddy represented to him he had retained an attorney and was "taking care of it." According to Paddy, he had discussions with Owens regarding the need to finance the property with the Bank. Paddy testified he attended the loan closing at Refosco's office along with Owens and Hostetler. Paddy testified Refosco explained the terms of the loan documents and all three Defendants

signed the documents. Refosco also testified the Defendants signed the 2005 loan transaction documents in her presence at her law office on June 24, 2005.<sup>2</sup>

Owens admitted signing a limited power of attorney in favor of Paddy on May 24, 2007. Pursuant to the power of attorney, Owens authorized Paddy to execute in Owens's name the "HUD-1 Statement, Deed, Disbursement Authorizations, and any and all other closing documents in connection with the sale of [the property]." Owens, however, stated the power of attorney was solely for the purpose of allowing Paddy to pick up Owens's share of the property's sale proceeds in Columbia.<sup>3</sup> Paddy did not disagree with Owens's characterization, but stated that the power of attorney was also for the purpose of allowing Paddy to make decisions related to the property and sign documents associated with the property and its financing. Paddy signed the 2009 promissory note on behalf of Owens as attorney-in-fact. According to Paddy, he explained to Owens, prior to signing on his behalf, the terms of the transaction. Owens revoked the power of attorney on June 30, 2010.

After the Bank filed its mortgage foreclosure action, Paddy testified he hired an attorney to represent only himself and not Owens and Hostetler. Paddy stated he told Owens he had "hired a lawyer in that county to take care of whatever we had to do on this foreclosure and to keep me abreast of what was going on." According to Paddy, while the attorney was only representing Paddy, Paddy was "looking out for [Owens]." Paddy testified he did not tell Owens an attorney would appear on Owens's behalf.

[402 S.C. 647]In a November 30, 2010 order, the master denied Owens's motion to set aside entry of default, finding Owens's mistaken belief that Paddy would answer the complaint on his behalf did not meet the "good cause" standard set forth in Rule 55(c), SCRCP. The master noted the record was void



of any evidence Paddy agreed or suggested he would hire an attorney for Owens. The master

[741 S.E.2d 54]

found Owens failed to take steps to protect himself and should not be rewarded for his "own negligence and intentional ignorance." Subsequently, Owens filed a motion to reconsider, which the master denied on March 9, 2011. The appeal followed.

### STANDARD OF REVIEW

The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the circuit court. *Harbor Island Owners' Ass'n v. Preferred Island Props., Inc.*, 369 S.C. 540, 544, 633 S.E.2d 497, 499 (2006). The circuit court's decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion. *Mitchell Supply Co. v. Gaffney*, 297 S.C. 160, 163, 375 S.E.2d 321, 322 (Ct.App.1988). An abuse of discretion occurs when the judgment is controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support. *In re Estate of Weeks*, 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct.App.1997).

### LAW/ANALYSIS I. Entry of Default

Owens argues the master erred in denying his motion to set aside entry of default because the Lexington County Clerk of Court failed to formally enter the default into the court records. Because Owens failed to raise this argument to the master, it is not preserved for our review. *See Doe v. Doe*, 370 S.C. 206, 212, 634 S.E.2d 51, 54 (Ct.App.2006) ("To preserve an issue for appellate review, the issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court.").

### II. Good Cause



Owens argues the master erred in finding Owens failed to demonstrate good cause for failing to answer the complaint. We disagree.

[402 S.C. 648] Rule 55(a), SCRCP, provides that when a party fails to respond to a complaint, the clerk shall record an entry of default. However, Rule 55(c), SCRCP, permits a party to move to set aside the entry of default. The standard for granting relief from an entry of default under Rule 55(c) is mere "good cause." "This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice." *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009). "Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted." *Id.* at 607-08, 681 S.E.2d at 888 (citing *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct.App.1989)). "The trial court need not make specific findings of fact for each factor if there is sufficient evidentiary support on the record for the finding of the lack of good cause." *Id.* "A motion under Rule 55(c) is addressed to the sound discretion of the trial court." *Id.*

Owens contends he has shown good cause for failing to answer the complaint. First, Owens argues Paddy misled him into believing Paddy had hired an attorney to answer the complaint on Owens's behalf. Owens asserts he reasonably relied on Paddy's representations because Paddy had his power of attorney, which allowed him to act on Owens's behalf regarding the property. Owens argues he immediately hired an attorney when he learned Paddy did not file an answer on his behalf. Owens maintains that, as a 79-year-old with a limited education, he was unaware he was signing

loan documents and had complete trust in Paddy.

We find evidence in the record supports the master's finding Owens did not show good cause for failing to answer the complaint. While Owens testified he contacted Paddy after receiving the complaint and Paddy told him he had hired an attorney and would "take care of it," Paddy disputed this characterization. Paddy testified he never told Owens he had hired an attorney to represent him and file an answer on his behalf. Furthermore, Owens presented no evidence he took any steps to protect himself by contacting either Paddy or [402 S.C. 649]Paddy's attorney to

[741 S.E.2d 55]

confirm an answer would be filed on his behalf. See *Hill v. Dotts*, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct.App.2001) (holding "a party has a duty to monitor the progress of his case. Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney.").

Owens argues he is entitled to relief pursuant to the factors outlined in *Wham*. See *Wham*, 298 S.C. at 465, 381 S.E.2d at 501-02 (holding the master shall consider the following factors in deciding whether to grant relief from an entry of default: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted). Owens contends his motion for relief was timely, he had a meritorious defense, and the Bank would not be prejudiced. Because we find the master did not err in finding Owens failed to show good cause for failing to answer the complaint, we need not consider the *Wham* factors. See *Sundown*, 383 S.C. at 607-08, 681 S.E.2d at 888 (holding a court need only consider the *Wham* factors "[o]nce a party has put forth a satisfactory explanation for the default");

*Dixon v. Besco Eng'g, Inc.*, 320 S.C. 174, 179, 463 S.E.2d 636, 639 (Ct.App.1995) (holding the trial court is not required to make specific findings of fact on the record for each *Wham* factor if the record contains sufficient evidentiary support for the finding of lack of good cause).

Owens also asserts the master erred in applying an excusable neglect standard in determining Owens was not entitled to any relief. Although the master discussed this standard during the hearing on Owens's motion to reconsider, the master also discussed good cause during the hearing on Owens's motion to set aside entry of default, and he properly applied the good cause standard in his final order.

Finally, Owens argues the master erred in citing *Pilgrim v. Miller*, 350 S.C. 637, 567 S.E.2d 527 (Ct.App.2002), in his order. The master cited *Pilgrim* for the proposition that a defendant's mistaken belief that a fellow defendant would file an answer on his behalf does not meet the good cause standard. In *Pilgrim*, this court noted that "[t]he courts of this state have consistently held that the negligence of an attorney or insurance company is imputable to a defaulting litigant." 350 S.C. at 642, 567 S.E.2d at 529. Here, the master concluded[402 S.C. 650]that "[i]f reliance on one's own attorney is insufficient to show 'good cause,' then reliance on another defendant and his attorney is equally insufficient." Owens contends the master's reliance on *Pilgrim* was an error of law because *Pilgrim* was vacated by our supreme court. We agree with Owens that *Pilgrim* was vacated on April 25, 2003. See *Bage, LLC v. Se. Roofing Co. of Spartanburg, Inc.*, 383 S.C. 489, 490, 681 S.E.2d 867 (2009) (noting the parties in *Pilgrim* settled while the petition for certiorari was pending before our supreme court; therefore, the decision was vacated). However, the master's reliance on *Pilgrim* was not an error justifying reversal because the proposition for which *Pilgrim* stands was



not overturned by the court and remains the law of this state. See *Sundown*, 383 S.C. at 609, 681 S.E.2d at 889 (holding "the law is clear that an attorney or insurance company's misconduct is imputable to the client").

**CONCLUSION**

Based on the foregoing, we find the master did not abuse his discretion in refusing to grant Owens relief under Rule 55(c), SCRPC. Accordingly, the master's order is

AFFIRMED.

**SHORT and KONDUROS, JJ., concur.**

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Notes:

<sup>1</sup> Refosco is Paddy's daughter.

<sup>2</sup> Refosco testified she would not have witnessed and notarized the documents unless Owens had signed them in her presence.

<sup>3</sup> Owens did not read the power of attorney agreement before signing it.



1 judgment being one of finality. A judgment something on  
2 the record that is actual that you can seek damages from.  
3 I have no case law in South Carolina that differentiates  
4 between what maybe what the rule says about the clerk  
5 entering it and distinguishing that from a judge signing  
6 an order of default. Again, the Supreme Court has talked  
7 about the finality of a judgment. In this case, we don't  
8 have a judgment, that's why I would argue that this falls  
9 under 55(c), Your Honor.

10 MR. CONNELL: And, Your Honor, you've heard no  
11 reason why ---

12 THE COURT: What he's saying is even at that  
13 level, you have to at least show some reason for the  
14 failure to answer, but clearly there is no excusable  
15 neglect to the standard if it were a judgment. I don't  
16 think that we've met that level, but nonetheless you still  
17 have to give a reason why it was not answered.

18 MR. HOGSETTE: Your Honor, and certainly so.  
19 And in the courts in looking at implied in 55(c) have said  
20 that for example there was one case that I looked at this  
21 morning that talked about the fact that mere negligence  
22 on an insurance adjuster. If you were to get sued and you  
23 take it to your adjuster and you thought your adjuster  
24 would take it on to somebody else, then that by itself  
25 wasn't enough.

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM MARION COUNTY  
Court of Common Pleas

The Honorable Michael G. Nettles, Circuit Court Judge

CASE NO. 2018-CP-33-00534

**RECEIVED**  
JUL 18 2019  
SC Court of Appeals

James Washington, Jr. .... Appellant

vs.

Crystal Denise Dudley ..... Respondent

PROOF OF SERVICE

PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of Kelaher, Connell & Connor, P.C., and that she has served a copy of the **Appellant's Memorandum of Law in Support of Immediate Appealability** on the Respondent, on the 16<sup>th</sup> day of July, 2019, by depositing a copy of same in the United States Mail, postage prepaid, to:

Alexander S. Hogsette, Esquire  
Turner Padgett Graham & Laney, P.A.  
P.O. Box 5478  
Florence, SC 29502

Shelia Y. McCumbee  
Shelia Y. McCumbee

**SWORN AND SUBSCRIBED** before me,  
this 16<sup>th</sup> day of July, 2019.

Donna H. Hand  
Notary Public for South Carolina  
My Commission Expires: 3-28-26

KELAHER, CONNELL & CONNOR, P.C.

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July 16, 2019

**RECEIVED**

JUL 18 2019

SC Court of Appeals

The Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

Re: Appellate Case No. 2019-000759  
*James Washington, Jr. v. Crystal Denise Dudley*  
C/A No. 2018-CP-33-00534  
Our File No. 2018-0041C

Dear Ms. Kitchings:

Enclosed please find an original and one copy of Appellant's Memorandum of Law in Support of Immediate Appealability and Proof of Service in the above-captioned case. Please return a filed copy to me in the self-addressed, stamped envelope enclosed for your convenience.

By copy of this letter, I hereby serve the Appellant's Memorandum on the Respondent through counsel of record.

Should you have any questions or need anything further at this time, please do not hesitate to contact me.

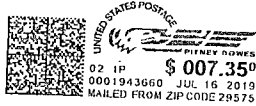
Sincerely yours,



Gene M. Connell, Jr.

GMC,Jr.:sm  
Enclosures

cc.: Alexander S. Hogsette, Esquire



<i>Kelahr, Connell &amp; Connor, PC</i> 1500 US HIGHWAY 17 NORTH, SUITE 209 POST OFFICE DRAWER 14547 SURFSIDE BEACH, SC 29587
<b>To</b>  The Honorable Jenny Abbott Kitchings South Carolina Court of Appeals Post Office Box 11629 Columbia, South Carolina 29211

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SC Court of Appeals

